

Report of Application:

Bodrum Kebab and Pizza House, 37 High Street, Woburn Sands

Application Reference No: 141950

1. Summary of Application

- 1.1 This is a new premises licence application submitted by Mr Ali Etker. If granted it will permit:

Late Night Refreshment (the supply of hot food and drink after 11.00 pm) on Fridays and Saturdays 23:00 to 00:00.

There are no seasonal variations.

- 1.2 The application is detailed at **Annex A**.
- 1.3 The food concerned is likely to be kebabs; burgers; chips etc. for takeaway consumption

2. Background Information

- 2.1 The premises are located in Woburn Sands, on the High Street. The street contains a number of shops, cafes, restaurants and a pub. There is no dedicated parking, although there is public parking directly outside the premises and parking around the town.
- 2.2 Plans and pictures of the locality are included at **Annex B**.
- 2.3 The premises have never held a premises licence. The application has been submitted because the Council as Licensing Authority was informed late last year that the premises had been trading without any authorisation. A visit in November 2016 and subsequent meeting with the owners aims to bring the premises into compliance. Once the management were informed of the requirement for a licence they stopped trading after 11.00 pm.
- 2.4 There have been no relevant complaints made against the premises.
- 2.5 Mr Ali Etker appears to have operated the business since 2014.

3. Promotion of Licensing Objectives

- 3.1 The application is for a total of two hours licensable activities a week. As such the steps being taken to promote the licensing objectives are perhaps understandably brief.

- 3.2 The licence holder will:
- (a) provide a bin inside the shop for customer use; and
 - (b) instruct customers to be quiet.
- 3.3 You will note from the representations that there is a concern about noise from late night customers attending, potentially after visiting a pub. Nothing has been mentioned in the application about reducing this potential noise. It could be expected that the background noise on the High Street will be relatively quiet between 11.00 pm and midnight on Friday and Saturday nights and so any additional noise could be disturbing.
- 3.4 Those who have provided representation have been asked whether they are already suffering from any particular nuisance. No additional details have been received.

4. **Responsible Authorities**

- 4.1 There is one representation from Environmental Health. It has been requested that the application be amended leading to a condition being placed on the licence as follows:

At the close of trading every day, the premise licence holder, or his representative shall ensure all litter is removed from the vicinity of the business location. All litter and waste, including oil and grease products, must be suitably disposed of

- 4.2 The applicant has not responded to this request. This representation is detailed at **Annex C**.

5. **Other Persons**

- 5.1 The Licensing Authority received representation from Woburn Sands Town Council and one local resident. Each representation is listed at **Annex D**.
- 5.2 The representations reference potential noise nuisance from customers, specifically those driving to the premises or visiting from a local pub. Potential litter, security and parking issues are also mentioned as well as odour potential from the extract duct.
- 5.3 Both parties have been asked to provide additional information on the current operation of the premises in order to help the sub committee make a decision. The Committee may find it useful to question the parties at the hearing about the operation of the premises given that it is known to have traded in the past to the hours now sought.

6. Policy Considerations

Relevant sections of the Guidance issued under Section 182 of the Licensing Act 2003.

Section 1.16

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

must be appropriate for the promotion of the licensing objectives; must be precise and enforceable; must be unambiguous and clear in what they intend to achieve;

should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation; must be tailored to the individual type, location and characteristics of the premises and events concerned; should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case; should not replicate offences set out in the 2003 Act or other legislation; should be proportionate, justifiable and be capable of being met; cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and should be written in a prescriptive format.

Section 2.3

Conditions (in respect of crime and disorder) should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally.

Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

Section 2.18

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping..... In certain circumstances, conditions relating to noise emanating from the premises may

also be appropriate to address any disturbance anticipated as customers enter and leave

Section 2.20

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

Section 9.4

A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives..... In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.....There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

Section 9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

Section 10.9

It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Section 10.14

Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

Licensing Authorities Statement of Licensing Policy 2013 - 2018

- 2.1 The council will carry out its statutory duties under the Licensing Act 2003 as the licensing authority and have due regard to the licensing objectives.
- 2.2 It is important to note that all objectives have equal importance in the implementation of this policy.

2.3 The Licensing Objectives are: The prevention of crime and disorder; Public safety; the prevention of public nuisance and the protection of children from harm.

3.2 The following will also be relevant:

Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria.

The council's legal officer will ensure that the rules of 'natural justice' will be applied at all times during hearings or reviews.

The right of any individual or body to apply for a variety of permissions is not undermined.

The statutory right of any responsible authority or other person to make appropriate representations to an application or to seek a review in respect of a granted authorisation where appropriate is accepted.

The impact of the activities taking or proposed to take place at a licensed premises or businesses or individuals who are likely to be affected by it.

The licensing authority, on behalf of the council, may notify parties they consider appropriate such as residents, councillors, town and parish councils and community councils etc. of relevant applications.

There is no presumption of grant under the Licensing Act.

5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives.

5.3.3 The licensing authority is likely to impose stricter conditions regarding noise control for those premises that are situated close to residential areas if relevant representations are received. In these situations the licensing authority will expect the applicant to have scoped the potential for public nuisance including noise and/or vibration nuisance, and to have factored in suitable control measures within their operating schedule.

5.3.4 The licensing authority may set an earlier closing time where after representations having been made, it considers this is appropriate having regard to the nature of the licensable activities and the impact on the licensing objectives.

7.2.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent these matters occurring.

7.2.2 The licensing authority will have particular regard to the likely impact on these matters when considering the location, operation and

management of all proposed licence or certificate applications, variations and notices.

- 10.1 New premises licences will be granted except where;

Valid representations are received opposed to the application and the grant of the licence will undermine the licensing objectives.

- 10.2 When considering contested applications the licensing sub-committee must have regard to the licensing objectives this could include reference to the following information:

The occupancy figure for the proposed premises

Whether the proposed premises will act as a replacement for others in the area that no longer have a licence

The proposed methods of management outlined in the applicants operating schedule

The proposed hours of operation

The proposed licensable activities

The impact on the emergency services

The views of police, including crime and disorder statistics along with the seriousness and nature of previous incidents occurring at similar premises in the locality

Compliance history of the applicant.

- 16.1 The Council acting as the licensing authority has a duty to act singularly or with its partners to reduce crime and disorder throughout Milton Keynes, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998.

- 16.2 Thames Valley Police has provided data to the licensing authority that the licensing authority may consider the following, as examples of the issues that may be referred to as key components in the relationship between the crime and disorder licensing objective and any relevant representations received in respect of an individual premises:

The location of the premises

Compliance history

- 17.1.2 The licensing authority will attach conditions to licences or certificates only to ensure that they will:

refer to licensable activities as stated in the operating schedule,

refer to one or more of the licensing objectives, and

deal with any relevant representations received from a responsible authority or interested party that are considered by officers or the licensing subcommittee to be appropriate.

17.1.6 Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate.

17.1.9 The licensing authority will normally attach a condition to the granted licence or certificate to confirm that the licensed plan forms part of the authorisation/operating schedule

17.5.1 The licensing authority wishes to protect the amenity of residents and businesses in the vicinity of licensed premises and for these purposes 'in the vicinity' is taken to mean the immediate area around licensed premises without any stated distance criteria. Matters of concern will be dealt with on an individual basis

17.5.2 Where considerations apply to late night refreshment premises, they shall only be taken to apply to their operation between the hours of 11 p.m. and 5 a.m. when a premises licence would be required.

17.5.4 The licensing authority will also consider representations made by relevant persons or responsible authorities on the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. These could include the steps taken or proposed to be taken by the applicant regarding the following issues:

Excessive noise and vibration escaping from the premises, including music, noise from mechanical ventilation equipment and human voices.

Disturbance by customers, staff, delivery vehicles or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7a.m.

Queuing either by pedestrian or vehicular traffic on land under the applicant's control.

Arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents

Use of gardens and other open-air areas within the curtilage of the premises.

Siting of external lighting.

Increase in refuse storage or additional littering in the vicinity of the premises.

Previous history of nuisance complaints.

Potential for odour nuisance.

Confidence in the management to deliver the control measures proposed.

7. Officers Observations

- 7.1 This premises licence raises local concerns that a premises opening until midnight selling hot food will cause disturbance
- 7.2 As the premises has already been operating to the hours applied for without a licence in place, evidence of existing problems from those making representations will be of relevance in terms of promoting the licensing objective of preventing public nuisance

8. Associated Papers

None.

Contact Officer:

For further information on this application please contact James Sloan on telephone 01908 252801, e-mail: james.sloan@milton-keynes.gov.uk or 01908 252800 licensing@milton-keynes.gov.uk